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 Franklin A. Mitchell

ECF FILED ON 04/15/09

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In re:)	Case No.: BK-S-08-24236-BAM
)	
FRANKLIN A. MITCHELL,)	Chapter 7
)	
Debtor,)	Adv. No.: 09-01068-BAM
STEPHEN BERINGER and MARIA-)	
NICOLLE BERINGER,)	
)	
Plaintiff,)	ANSWER
vs.)	
)	
FRANKLIN A. MITCHELL,)	
)	DATE:
Defendant,)	TIME:
)	

Defendant, Franklin A. Mitchell, (hereinafter "Mitchell" or "Defendant") by and through his attorney, Christopher P. Burke, Esq., Answers the Complaint of Plaintiffs, Stephen and Maria-Nicolle Beringer, (hereinafter "Beringer" or "Plaintiffs") by and through their attorney, Brian D. Shapiro, Esq. of LAW OFFICE OF BRIAN D. SHAPIRO, LLC.:

1. Mitchell admits the following allegations paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 43.

1 2. Mitchell denies the following allegations paragraphs 18,
2 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32,
3 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, 46, 47,
4 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61,
5 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75,
6 76, 77, 78, 79, 80, 81, 82, 83, 84, 85.

7
8 **AFFIRMATIVE DEFENSE ONE**

9 (Failure to State a Cause of Action)

10 The Plaintiff's Complaint fails to state a cause of action
11 against Geronimo upon which relief can be granted.

12 **AFFIRMATIVE DEFENSE TWO**

13 (Doctrine of Laches)

14 The Plaintiff has failed to assert his rights and/or claims
15 in a timely manner and is barred by the applicable Doctrine of
16 Laches.

17 **AFFIRMATIVE DEFENSE THREE**

18 (Subject Matter Jurisdiction)

19 The Court lacks subject matter jurisdiction in this action.
20

21 **AFFIRMATIVE DEFENSE FOUR**

22 (Statute of Limitations)

23 Plaintiff's claim is not timely and barred by the applicable
24 statute of limitations.
25

26 **AFFIRMATIVE DEFENSE FIVE**

27 (Mitigation)
28

1 Plaintiff failed to take reasonable action to mitigate the
2 damages claimed in the complaint to be a result of Defendants
3 acts or omissions. Accordingly, the amount of damages to which
4 Plaintiff is entitled, if any, must be diminished or barred by
5 reason thereof.

6
7 **AFFIRMATIVE DEFENSE SIX**

8 (No Causal Relationship)

9 Plaintiff is barred, in whole or in part, from recovering
10 from Defendant on any claims because there is no causal
11 relationship between any damages, the claimants alleged to have
12 been suffered, and any act of Defendants.

13
14 WHEREFORE, Defendant respectfully requests this Court deny
15 Plaintiffs Complaint and grant the relief requested below:

- 16 1. Dismiss Plaintiff's Complaint with prejudice.
17 2. Award Plaintiff nothing by way of this complaint.
18 3. Award Defendant attorney fees. 11 U.S.C. §523(d).
19 4. For any other relief deemed just and proper.
20

21 Dated this 15th of April, 2009.
22
23

24 /S/CHRISTOPHER P. BURKE, ESQ.
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